REMARKS

This is a full and timely response to the outstanding nonfinal Office Action mailed November 20, 2002 (Paper No. 10). Reconsideration and allowance of the application and presently pending claims 1-22 are respectfully requested.

It is believed that FIG.s 6 and 13 are correct as drawn. FIG. 6 is a view taken from FIG. 3, which would not show the stirrups 105.

FIG. 13 is a view of FIG. 12 which would not show the stirrups 205.

All of the claims have been rejected under 35 U.S.C. §103(a) as being unpatentable based upon different combinations of prior art patents than used in the first Office Action. Applicant's response is based upon two major points. In the first place, the combination of prior art asserted by the Examiner does not render the claims obvious for the reasons set forth below. Secondly, Applicant's arguments are buttressed by a Declaration under Rule 132 which proves significant commercial success of the invention, which will be discussed infra.

Claims 1-6 have been rejected under 35 U.S.C. §103(a) as being unpatentable over *Van Den Nieuwelaar et al.* in view of *Sullivan*. *Van Den Nieuwellar et al.* discloses a weighing station 16 to weight the poultry carcass. However, station 16 not only weights the carcass 32 and hook 4, but supporting rod 15, rollers 24, projecting carrier 25 and fork supporting piece 23. (See FIG.6) Applicant has made an important improvement over *Van Den Nieuwellar et al.* in that Applicant's shackle assembly only weighs the carcass, tubular support 120, bird carrier 104 and wheels 112 and 114. See FIG. 6 of Applicant's drawings. Weighing only a portion of the shackle, as Applicant does with his invention, results in a more accurate measurement of the weight of the carcass as there is a greater margin of error with an increase in the weight of the shackle being weighed as shown in *Van Den Nieuwellar et al.*. Applicant has discovered an important principle which is that the greater the weight of the shackle, the greater the margin of error that is likely to be incurred due to differences in wear and tear and variations between the shackles being weighed. It is easier to obtain a standardized weight with the lighter mass of shackle being weighed using Applicant's invention than if the entire shackle were being weighed as shown in *Van Den Nieuwellar et al.*

The Examiner attempts to use the telescopic means of *Sullivan* in combination with *Van Den Nieuwellar et al.* to make Applicant's invention obvious. *Sullivan's* conveyor is designed to lower or raise the load-carrying hook 31 at various stations. (Col. 1, lines 29-36) *Sullivan* in no way discloses or suggests that his conveyor mechanism is suitable for weighing the load being carried by hook 31. *Sullivan* does not disclose or suggest any way of weighing the load being carried by hook 31. The absence of any weighing mechanism in *Sullivan* makes it illogical to look to *Sullivan* to find a solution to the problem of weighing of too large a mass of the shackle assemble in order to determine the weight of the carcass. *Sullivan* discloses a coil spring 25 in cylinder 19 to maintain the cross head 20 to which extensions 21 and rollers 22 are attached in proper position. (FIG. 2 of Sullivan) The purpose of the spring 25 in *Sullivan* is to keep the cross head 20 in an elevated position in cylinder 19 so the rollers 22 remain in contact with the cam bars 36 on which the rollers travel. (Col. 2, line 39-43) This is important in order to keep the hook 31 at the right elevation at the loading or unloading station in which cam bar 36 is located. If one were to incorporate *Sullivan*'s mechanism in *Van Den Nieuwellar's et al.* conveyor, one would follow the teachings of *Van Den Nieuwellar* and put the weighing station at the cam bar 36. It is obvious that doing this would not result in an accurate weight because coil spring 25 is interposed between the scale and the hook 31 which would distort any weight. The coil spring 25 in *Sullivan* basically serves the function of keeping the rollers 22 in contact with the cam bar 36. It should also be pointed out that the introduction of the spring between the load being carried on hook 31 and the scale on 36 would likely result in some harmonic motion of the load which would make obtaining an accurate weight impossible. Applicant has been able to develop a telescoping shackle that does not contain any spring exerting force against the wheels 112 as illustrated in Applicant's drawings by FIG. 1 that would distort the weight.

In respect to the Examiner's comments as to claim 2, it should be pointed out that *Sullivan* discloses the presence of a coil spring 25 in FIG. 2, which the Examiner has cited, which is not required in Applicant's invention and in fact would render Applicant's device inaccurate in weighing if a spring were included. It is well recognized in Patent Law that it

may be inventive to eliminate an element required by a prior art reference. These same remarks are applicable to the Examiner's rejection of claims 3, 4, and 5.

The Examiner further argues in respect to claim 6 that *Van Den Nieuwellar et al.* has a boss 21 and guide track 29 to indicate the angular position of the turning means. (FIG. 8) Applicant's means in claim 6 is shown by pin 209 as illustrated in FIG. 10. This pin 209 shows the location of the turning means 108. See FIG. 1 of the application The proper position of this pin can be determined by using a beam of light or magnetic field that is interrupted by pin 209. Specification, page 8, line 18-page 9, line 2. It appears that the boss 21 and guide track 29 at *Van Den Nieuwellar et al.* cannot indicate the angular position of the turning means as required by claim 6 as the boss is obscured from view by closing plate 27 as shown in FIG. 8. A device that indicates the angular position does not function if it cannot be seen or measured in some way. It should also be pointed out that Applicant shows the angular position by the use of the single pin 209, whose position can be determined either by a beam of light or magnetic field or other type of position indicator.

Claims 7-8 and 10 have been rejected under 35 U.S.C. §103(a) as unpatentable over *Van Den Nieuwellar et al.* in view of *Sullivan* in view of *Hazenbroek's* U.S. Patent No. 6,179,702. In respect to claim 7, the Examiner cites *Van Den Nieuwellar et al.* as disclosing turning means 21 and 29. Applicant's claim 7 specifies that the turning means responds to a "cam." *Van Den Nieuwellar et al.* does not disclose a cam, but rather a "run-up part 28." (Column 5, lines 41-52). *Van Den Nieuwellar et al.* has a "run-up part 28" which can only be turned a few degrees, such as 45 degrees. On the other hand, Applicant's cam 108 can be turned 360 degrees, as is common of cams. In short, *Van Den Nieuwellar et al.* does not disclose a cam as required by claim 7 and thus cannot accomplish by their "run-up part 28" the function of a cam. The Examiner cites *Sullivan* for showing the connector means. However as pointed out above, *Sullivan*'s connecting means has a spring which would not be suitable for weighing the carcass on the weighing scale as required by claim 7.

In respect to claim 9, the Examiner cites *Altenpohl* as disclosing overlapping ends that are "adapted to move axially with respect to each other in response to the trolley-20 passing over the weighing scale." *Altenpohl* does not disclose any overlapping ends that are

adapted to move axially. The upper post position 14 in *Alenpohl* is connected by clevis member 36 to link member 28. Neither link member 28 nor upper post position 14 of *Alenpohl* are designed to move axially in respect to each other or within the individual member. Thus, *Alenpohl* does not disclose the element specifically mentioned in claim 9.

The Examiner has rejected claims 11-18 under 35 U.S.C. §103(a) as being obvious over *Van Den Nieuwellar et al.* as modified by *Sullivan* and *Hazenbroek* in view of *Alenpohl.* All of these claims are dependent upon claim 7 either directly or through an intermediate claim. The comments made above in respect to claim 7 are equally applicable to these claims. A significant deficiency of the *Sullivan* reference is the presence of the spring 25 which would make it impossible to weight the carcass as required by claim 7 and all of the claims dependent upon it. Specifically in respect to claim 11 the Examiner asserts that *Alenpohl* discloses that the "top end of the tubular support - 14 slidably receives the rod 28." Office Action page 9 lines, 1. The tubular support 14 of *Alenpohl* is attached to link member 28 by pivot 30 and does not slidably receive said rod as required by claim 11. In other words tubular support 14 and link member 28 pivot in respect to each other but do not slide in respect to each other along their longitudinal axis.

In respect to claim 16, Applicant does not agree with Examiner that it would be obvious to place a slotted opening in the rod. Applicant does agree with the Examiner that one of the advantages of putting the slotted opening in the rod rather than in the tubular support is to avoid outside contamination. One of the overriding objectives of this invention is to minimize outside contamination. With that objective in mind, it is believed that it is not at all obvious to put the slot in the rod.

In respect to claim 18, the Examiner again refers to boss 21 and guide track 29 as indicating the angular position in connection with this reference. As pointed out above, the closing plate 27 hides the boss 21 from view, which means that it cannot be used to indicate an angular position.

Claims 19-22 have been rejected as being obvious over *Linville* in view of *Sullivan* in view of *Hazenbroek.* (U.S. Patent No. 4,896,399) It is believed that these claims are non-obvious over the art cited by the Examiner. One important weakness in the Examiner's combination of prior art is the inclusion of *Sullivan* to show the presence of the telescopic

connecting means which was added to claim 19 by Applicant's last response. As pointed out above the spring 25 in cylinder 19 of *Sullivan* would preclude the accurate weighing of the carcass which is required by claim 19. Furthermore, it is not logical to combine *Linville* and *Sullivan*. *Linville* shows weighing the carcass and the shackle 22 by lifting the shackle by precision chain 42 across weighing platform 44. (Col. 3, lines 18-28) The Examiner correctly points out that in *Linville* the bird carrier 22 and 24 is lifted with respect to the trolley support 18 and 29 which is not weighed by the scale 40 (Office Action page 12, carry over paragraph). The trolley support 18 and 29 is not lifted in *Linvville* because the bird carrier 22 and 24 is lifted by a precision chain 42 so that pendant 30 does not rest on pendant 16. (Col. 3, line 23-29) Thus, *Linville* accomplishes his objective of not weighing the entire shackle. The trolley support 18 and 29 is being weighed. Since that objective is already met, there would not be any motivation to seek another method of accomplishing this, such as suggested by *Sullivan* according to the Examiner. Of course as pointed out above, the spring 25 in *Sullivan* could prevent that objective from being met anyway. It is also not logical to combine *Hazenbroek* (U.S. Patent No. 4,896,399) as *Hazenbroek* is not concerned with weighing carcasses, but with separating the parts of the carcass. Furthermore, one is not likely to look at a simple poultry cutting table patent for a solution to a problem posed by a high speed chicken process assembly for which Applicant's shackle is designed. Thus claims 19-22 are clearly patentable over the art cited.

Although it is believed that all of the claims in this Application are patentable for the reasons set forth above, the enclosed Declaration Under Rule 132 proves the commercial success of the telescopic poultry shackle (New Shackle) of this invention. There was a strongly felt demand in the industry for a shackle that would permit the cut-up function and weighing function to be combined in the same line as is demonstrated by the attached Declaration. The commercial success of this invention is directly attributable to features of the New Shackle that are claimed in the claims. Applicant has successfully solved this problem of being able to weigh the bird in the cut-up line by the invention of the New Shackle. Proof of the success in solving this problem is demonstrated by the sales figures of the New Shackle during a period of less than two years since its introduction.

Consequently, it is believed that the accompanying Declaration conclusively buttresses the arguments about patentability set forth above.

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims, 1 to 22, are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Commissioner for Patents, Washington D.C. 20231, on February 20, 2003.

Signature - Sharon H. Briscoe